IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 307 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NISSARALI FEDAHUSSAIN

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Appeal from Order No. 307 of 1996

MR JD AJMERA for Petitioner No. 1

MR MD PANDYA for Respondents No. 1-2

MR NK MAJMUDAR for Respondent No. 3

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 25/10/2001

ORAL JUDGEMENT

The appellant-plaintiff filed Special Civil Suit No.60/95 before the court of Civil Judge (S.D.), Amreli

against the respondent-Gujarat Electricity Board along with application for temporary injunction application Ex.5 restraining defendants or their agents from disconnecting electricity connection of the plaintiff on the ground that the plaintiff has not paid Rs.8,01,236.11 towards bills issued by the defendants. The learned Trial Judge by impugned order dated 30.4.1996 dismissed application Ex.5.

Against the impugned order passed by the learned Trial Judge dismissing application Ex.5 the appellant-plaintiff filed appeal before the District Court, Amreli. The said appeal was not entertained by the learned District Judge on the ground of its maintainability, as according to the learned Judge, the appeal from order would lie before this court.

The appellant-plaintiff has challenged in this appeal the aforesaid orders passed by the learned Trial Judge as well as Lower Appellate Court.

Regarding the impugned order passed by the trial court, learned counsel Shri N.K.Majmudar has relied upon judgment of Division Bench of this Hon'ble Court in case of Kiran Industries Vs. GEB, Baroda reported in 1995(2) GLR 1158 and submitted that the trial court had no jurisdiction to grant injunction and when the trial court has refused injunction this court should not interfere with the impugned order.

Mr.Majmudar has also submitted that the lower appellate court was wrong in holding that appeal would not lie before it against the impugned order passed by the trial court. In support of his submission he placed reliance upon the learned Single Judge of this court in case of Kaushik Rajendra Thakore Vs. Allied Land Corpn. reported in 1987(1) GLH (UJ) 21. In view of this judgment learned counsel Shri Ajmera straightaway conceded that the appeal would be maintainable only before the lower appellate court.

When it is clear that appeal from order would not be maintainable against the impugned order passed by the trial court then this court cannot go into the legality and validity of the impugned order passed by the trial Judge below Ex.5 and the order passed by the lower appellate court holding that "appeal against the trial court's order is not maintainable before it", has to be quashed and set aside."

Accordingly, this appeal is partly allowed only

to the extent that the impugned order passed by the lower appellate court in appeal is hereby quashed and set aside and the appeal is remanded back to the learned District Judge with a direction to decide the same in accordance with law. While deciding the same, learned Judge shall consider the judgment of this court in Kiran Industries (supra) and all other judgments cited by the learned counsel for the parties.

(B.J.Shethna, J.)

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